

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

RED BARN ACRES, LLC
Humboldt County, Iowa

Facility #58868

ADMINISTRATIVE CONSENT ORDER

NO. 2008-AFO- 34
NO. 2008-AQ- 50
NO. 2008-SW- 38

TO: Red Barn Acres, LLC
Attn: Gary Chamness, Registered Agent
2255 Little Wall Lake Road
Blairsburg, Iowa 50034

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Red Barn Acres, LLC (Red Barn Acres) for the purpose of resolving issues pertaining to open burning, improper solid waste disposal, and a prohibited manure discharge. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Clay Swanson, Field Office 2
Iowa Department of Natural Resources
2300 15th Street
Mason City, Iowa
Phone: (641)424-4073

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code chapter 455B Division IV, Part 1 (solid waste) and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality); Iowa Code section 455B.175(1), which authorizes the Director to

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issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459 (animal feeding) and the rules adopted or permits issued pursuant thereto; Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Red Barn Acres, also known as Chamness Swine, is a confinement feeding operation located on 9.45 acres in NW ¼, Section 26, Weaver Township, Humboldt County, Iowa (1420 260th Street, Gilmore City). The confinement structure is a single building. The manure control facilities consist of an earth basin to the west of the building and the shallow pits under the confinement floor. The shallow pits collect manure waste, which is regularly pumped to the earth basin. A tenant house and garage are located east of the confinement building. A one-acre open pasture is located east of the house. Red Barn Acres is noted by the Humboldt County Assessor's Office as the owner of the facility, acreage, and the residence.

2. On May 6, 2008, DNR Field Office 2 received a complaint alleging manure was being pumped from the Red Barn Acres confinement building pit onto the ground. The complainant also alleged that manure was running towards a ditch and a tile intake.

3. On May 7, 2008, Clay Swanson, environmental specialist for DNR Field Office 2, investigated the complaint and observed that manure had been pumped from a pit at the west end of the building to the one-acre open pasture. The pump was fitted to a hose, which traveled about 650 feet to the east, where it ended in the pasture. Manure solids had accumulated around the hose. Multiple pools of manure diluted with rainwater were also located in the vicinity of the hose. Pam Olsson, facility manager, stated that Gary Chamness instructed her and Mike Niles, who lived at the site, to pump the manure overflow from the pit into the small pasture. According to Ms. Olsson, the reason for pumping was the earth basin was too full. However, Mr. Swanson estimated that the earth basin had approximately two feet of freeboard. A sample of the pooled manure by the discharge hose was collected for laboratory analysis. Results of the collected manure sample were as follows:

Pollutant	Concentration	Limit
Total Suspended Solids	4700 mg/L	1 mg/L
Ammonia Nitrogen	650 mg/L	0.05 mg/L

Additionally, Mr. Swanson observed an open burn pit located at the southwest part of the pasture. The pit measured approximately 20 feet by 10 feet and was filled with water. The burnt remains in the pit consisted of a TV, plastics, furniture, cans, bottles, dishes, and other miscellaneous items. The open burning and solid waste disposal was found to be associated with the tenant home on the Red Barn Acres' property.

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4. On May 29, 2008, Mr. Swanson contacted Ms. Oleson, facility manager, by telephone. Ms. Oleson stated 400,000 gallons of manure were removed from the earth basin. Ms. Oleson also stated that the pasture had been cleaned up. DNR Field Office 2 also sent a certified letter to Gary Chamness requiring him to stop pumping manure onto the ground and to clean up the manure in the pasture.

5. DNR issued Red Barn Acres a Notice of Violation letter, dated May 29, 2008, for failure to retain manure produced in confinement enclosures. The letter also cited the open burning and improper solid waste disposal observed during the May 7, 2008 inspection. The letter informed Red Barn Acres that the matter was being referred for a further enforcement action.

6. On June 26, 2008, Mr. Chamness responded to the May 29, 2008 Notice of Violation letter. Mr. Chamness claimed that approximately 8,000 gallons of manure were accidentally pumped at the Red Barn Acres facility while attempting to land apply manure on the one-acre pasture. Mr. Chamness also disagreed that such pumping is a violation, reasoning that all manure is controlled in the storage lagoon between periods of land application. Mr. Chamness stated that all pooled rainwater and liquid manure mix was removed to the extent feasible. Mr. Chamness also stated that all materials from the burn pit had been removed and the area had been cleaned.

7. On July 7, 2008, Mr. Swanson revisited the Red Barn Acres facility to evaluate its compliance with the May 29, 2008 letter. Mr. Swanson found that the solid waste in the burn pit had not been removed as reported by Mr. Chamness. Moreover, some brush in the pit had been burned, which also included a piece of furniture.

8. On August 27, 2008, DNR legal personnel met with Mr. Chamness to discuss the violations. Mr. Chamness stated to the best of his knowledge everything had now been cleaned up at the facility. He also stated that the facility manager was no longer employed at the facility.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.2(3) requires that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. Manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities. Mr. Chamness directed Ms. Oleson and Mr. Niles to pump the manure overflow

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from the pit to the small pasture. The above-mentioned facts indicate a violation of this provision.

3. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

4. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Swanson observed evidence of a burn pit on the Red Barn Acres' property that consisted of a TV, plastics, furniture, cans, bottles, dishes, and other miscellaneous items. The above facts demonstrate a violation of this provision.

5. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapter 100.

6. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Mr. Swanson observed that solid waste had been disposed of in a burn pit rather than disposed of in a landfill. The above facts demonstrate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Red Barn Acres agrees to do the following:

1. Pay a penalty of \$4,000.00 within 30 days of the date from which the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of

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penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,000.00. The administrative penalty is determined as follows:

Economic Benefit Red Barn Acres and its tenant achieved an economic benefit from open burning and improper waste disposal. They saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the solid wastes from the site. Additionally, Red Barn Acres saved time and money by pumping the manure on the ground rather than properly land applying the manure. Based on these considerations, \$500.00 is assessed for this factor.

Gravity One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. It was conservatively estimated that 25,000 gallons of manure were pumped onto the ground surface. With frequent and heavy rains during the pumping incident, it is highly probable that manure discharged to a tile intake. Pools of surface water mixed with manure were documented at the discharge point in the pasture. It is also likely that manure soaked into the ground with a potential for contaminating groundwater. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and environment. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. The above-mentioned violation threatens the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – Red Barn Acres has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Moreover, there has been much publicity and discussion in Iowa about proper manure management. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Red Barn Acres. For that reason Red Barn Acres waives its rights to appeal this administrative consent order or any part thereof.

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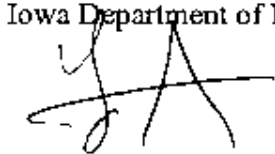

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146, 455B.191, and 455B.307.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 29 day of
Oct, 2008.

AUTHORIZED AGENT
Red Barn Acres, LLC.

Dated this 27 day of
Oct, 2008.

Facility #58868; Kelli Book; Clay Swanson, Field Office 2; VI.C, VII.C.1, and VIII.D.1.a